

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.838 OF 2004

IN

SUMMARY SUIT NO. 2683 OF 2000

Savitridevi C. Tiwari and ors. Plaintiffs

v/s.'

Shri Budhiraj R. Tiwari and Ors. Defendants

AND

The State of Maharashtra

and Ors. Respondents

U.S.R. Singh for the plaintiffs.

G.W.Mattos-AGP for state.

CORAM: S.U. KAMDAR, J.

DATE : 22ND FEBRUARY, 2005.

P.C. :

1. The present chamber summons is taken out by the plaintiff for modification of the order dated

15.1.2002 passed by J.A. Patil, J in chamber summons no. 787 of 2001 in suit no. 2683 of 2000. Against the aforesaid order passed in the chamber summons, an appeal was preferred being Appeal no. 448 of 2002 before the division bench of this court. The Division Bench has on 12.7.2002 granted liberty to move the learned single judge to point out the apparent inconsistency in the impugned order. Pursuant to the aforesaid liberty another chamber summons was taken out being chamber summons no. 1149 of 2002. The said chamber summons was placed before Kakade, J. By an order dated 21.1.2003 the learned single judge directed the office to take necessary directions from the Hon'ble Chief Justice to place the matter before the same judge. Accordingly, the matter was placed before J.A. Patil, J on 11.2.2003 when the learned single judge passed an order as 'no order' on the said chamber summons. Thereafter the said chamber summons came up for hearing before A.M. Khanwilkar, J. By an order dated 01.03.2004 the learned judge held that the chamber summons no.1149 of 2002 stands disposed off by virtue of no order passed on 11.02.2003 by

the learned Single Judge (Patil, J). The plaintiffs have taken out thereafter the present chamber summons being chamber summons for 838 of 2002 for similar reliefs i.e. for rectifying so called inconsistency in the order passed by J.A. Patil, J on 15.1.2002.

2. In my view the present chamber summons is entirely misconceived and thus not maintainable. In view of the order passed by A.M. Khanwilkar, J on 1.3.2004 it is not open for a party to reagitate the very same issue by taking out proceedings after proceedings when the matter has ultimately culminated by passing of an order being 'no order' in the earlier chamber summons no. 1149 of 2002. The present chamber summons is thus required to be dismissed.

3. Even otherwise on merits I find that the present chamber summons has no substance. The order passed by the learned single judge J.A. Patil, J on 15.1.2002 was made absolute in terms of prayer clause (a) and while granting prayer (b) the learned

single judge has consciously directed that the Taxing Master should appoint another suit valuer in place of respondent no.3 who shall report to the Taxing Master regarding the valuation of the suit property. The learned counsel appearing for the plaintiff had made a prayer for dispensing with and cancelling the order made by the Taxing Master, High court dated 8.8.2000 and computation of market value of the suit property by a third party valuer. I am of the opinion that while granting prayer (a) the learned single judge had not accepted the appointment of Mr. Rane as suit valuer pursuant to the order passed by the Prothonotary and Senior Master dated 30.6.2000. By the said order dated 15.1.2002 the learned judge directed that new valuer should be appointed. Undoubtedly there is some inconsistency by granting prayer (a) and while issuing specific direction to appoint new valuer. In my view the said inconsistency is of no much consequence in view of an express order passed directing the taxing master to appoint fresh valuer to evaluate the said property. However, the learned counsel for the plaintiffs prays that the Taxing

Master should decide the market value of the suit property as per the report prepared and maintained by the office of the sub-registrar, Thane and should not appoint any fresh valuer as directed by the court whilst granting prayer (b) of the chamber summons. I do not think that it is possible for me to pass such an order merely because there is so called inconsistency.

4. In my opinion the order dated 15.1.20-02 passed by the learned single judge has to be read that the appointment of Mr. Rane is cancelled and the Taxing Master should appoint a fresh valuer for the purpose of valuation of the suit property. The learned counsel for the plaintiff in support of his aforesaid contention has relied upon a division bench judgment in the case of Miss. Aninha D'costa v. Parvatibai reported in AIR 1965 Bom.113 (V.53 C 17) and has inter-alia contended that sometimes it is necessary to call an expert evidence to determine the value of the property though discretion is given to the court for adoption of such a procedure as it deems necessary for making the valuation and has to

determine the valuation of the property fairly. The aforesaid judgment does not apply to the facts of the present case. It is wellsettled that the record maintained by Sub-Registrar of Assurances in the form of reference is not an authenticated document to indicate the correct valuation of the suit property. I accordingly hold that the Taxing Master, High Court must comply with the order passed by the J.A. Patil, J and appoint a third party valuer to evaluate the suit property. I accordingly dispose off the present chamber summons. There shall be no order as to cost.

sd/-
